"Counsel for the respondents says, however, that the words 'in addition to and not in derogation of the rights' under the Act of 1846 mean that anything recovered under the 1934 Act shall not be allowed to diminish the full amount of damages which would be recoverable under the 1846 Act if the Act of 1934 had never been passed. I think that this argument is unsound. The clause refers to 'the rights' under the Act of 1846. Such 'rights' seem to be only the right of a personal representative to claim damages. The clause says nothing about the measure of damages so recoverable. If the legislature had meant to enact that the amount of damages under the 1846 Act should not be affected by anything recovered under the 1934 Act, they had the very pertinent precedent of the Fatal Accidents (Damages) Acts, 1908. Section 1 of that Act simply and clearly provides: 'In assessing damages .....under the Fatal Accidents Act, 1846..... there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of insurance.....' I think it is impossible to hold that the words 'The rights conferred by this Act..... shall be in addition to and not in derogation of any rights conferred by' the Act of 1846 are equivalent to: 'In assessing damages under the Act of 1846, any sum recovered under this Act shall not be taken into account'. The truth is, as far as I can see, that 'not in derogation of' means nothing more than 'shall be in addition to'. I have no idea why Parliament, or the draftsman, indulged in this unnecessary tautology, but I am quite satisfied that 'not in derogation of' cannot bear the meaning suggested for the respondents."

In the House of Lords in *Davies v. Powell Duffryn Associated Collieries, Ltd.*[7], it was held that the sub-section does not establish an exception to the general rule that in the assessment of damages under the Fatal Accidents Acts any benefit accruing to a dependant by reason of the relevant death must be taken into account and apportioned. Lord Russell of Killowen said (at p. 607) :—

"All that this sub-section does, according to the language used, is to provide that the rights shall co-exist, but I can find no words which would justify me in holding that the sub-section purports to alter the measure of damages recoverable for the benefit of a dependant under the Fatal Accidents Acts . . . . . I agree with the Court of Appeal that the words 'not in derogation of' merely emphasise what has been already said, and the rights conferred by the other Acts are additional to the rights conferred by the other Acts and are to that extent tautological."

The principle laid down in the abovementioned English cases has been adopted by the High Court of the former Federated Malay States in 1941 in the case of *Lok Yin v. Pat Thoo*[11].

The sum of $3,000 is therefore to be deducted from the sum of $15,000 leaving a sum of $12,000 of which :—

(a) $2,500 is to be allotted to each of the deceased's two daughters, issue of the first marriage, that is Lim Guat Sim and Lim Guat Ee;
(b) $700 to the deceased's daughter by the 1st plaintiff, Tan Chooi Thin;
(c) $600 to the deceased's father Lim Hong Heoh; and
(d) the rest, i.e. $5,700 to the deceased's widow, Tan Chooi Thin.

Costs between Party and Party to be paid by the defendant and the difference between the Party and Party costs and the Solicitor and Client costs of the plaintiffs to be paid to the plaintiffs out of the Estate of the said Lim Huat Lye.

Order accordingly.

Re WEE CHEOW KENG, DECD.; WEE SIN TECK v. THE BRITISH MALAYA TRUSTEE & EXECUTOR CO., LTD.

[C.A. (Murray-Aynsley, C.J., Storr and Whitton, JJ.) August 6, 1953]

[Singapore — Civil Appeal No. 7 of 1953]

Probate and Administration — Trustees — Deposit in Bank in joint names — Receipt and bearer security — Banking account — Rights of survivor in the event of death — R.S.C. O.52, r. 1 — Currency Ordinance, 1938, s. 8(1).

These proceedings arose out of the administration of the estate of one Wee Cheow Keng who died on the 18th March 1939.

The Originating Summons was taken out in 1941 and recently some of the questions raised therein were answered by Mr. Justice Brown and against his answer to prayer 5 the present appeal is brought. The subject matter of this appeal related to a fixed deposit of $100,000 paid in by the deceased with the Sze Hai Tong Bank in the joint names of himself and the present appellant, his son, who was then an infant. The Bank issued a receipt in Chinese and the material part of the receipt which had given rise to this action reads as follows:— "This document shall be received by Mr./Chop Wee Cheow Keng and Wee Sin Teck or bearer in Singapore." This receipt had been retained by the deceased during his lifetime, and was in his possession at the time of his death.

At the hearing before the Court of the first instance, the receipt was treated as a bearer receipt and the question which the Court considered as material was who had the title to this deposit receipt. It was held that the holder of it had the title, i.e. the deceased, and since there was no evidence of any gift or of any declaration of trust, the deceased was solely entitled to the deposit.

Held by the Court of Appeal reversing the judgment appealed against: the document was not a security or a document of title but a mere receipt. The words "or bearer" on the receipt merely have the effect of excusing payment by the Bank to a holder unless they had had a contrary direction from the depositors. The transaction must be treated as any other deposit in a bank and the right to the deposit would pass at law to the survivor of the two i.e. to the appellant.

[**Editorial Note:**— On the question of negotiability the main argument was it is not competent for parties to annex the attributes of negotiability to any contract except under statute or the law merchant. Cases cited were, **inter alia, Bechuanaland Exploration Co. v. London Trading Bank Ltd.** (1898) 2 Q.B. 658 and **Edelstein v. Schuler & Co.** (1902) 2 K.B. 144.]

CIVIL APPEAL.

H. R. Wilson for the appellant.

R. H. Green for the respondents.

T. E. Atkinson for the trustees.

Cur. Adv. Vult.

Murray-Aynsley, C.J.: — In this case the testator made a deposit in a bank in the joint names of himself and of the appellant who was then an infant. The bank issued a receipt for the money in the names of the testator and the appellant which document recited the fact that interest was agreed at a certain rate and added that "this amount shall be received" by the named persons "or bearer in Singapore". I think that

it is reasonably clear that if this had been an ordinary banking account the right to this sum of money would have passed at law to the survivor in the event of the death of one of the named persons and not to the personal representatives of the deceased, and further, in the circumstances of this case, there would in the ordinary way be no question of a resulting trust. The doctrine of resulting trusts has been applied in this Colony. I regard this as a misfortune. The rules as applied in England may have been in accordance with conditions that prevailed in England in the time of the first Queen Elizabeth but they have long since become merely arbitrary and I do not think that they have ever had any relation to conditions in this Colony. It is probably too late to do anything about it.

There are juristic difficulties in considering what happens when money is paid by anyone into the banking account of another. The resulting chose in action is a right in contract by that other person against the bank. This involves questions of agency and if the payment was not made at the invitation of the other person ratification is necessary to complete the cause of action. However, the thing is so commonly done that in the normal course of events there is no difficulty in assuming these things though they do not occur to those who are not lawyers. To the lay mind, no doubt, the whole thing appears as simple as dropping a coin into a money box.

In the present case the difficulties arise from the form of the receipt issued, in particular, from the words "or bearer". The learned Judge who heard the matter at first instance held that this document was a bearer security and that the title was in the holder who was the testator and that the appellant never had any rights in it either at law or in equity. I do not agree with this. This document was not negotiable and it could not be assigned at law by mere delivery. Parties cannot by contract make a chose in action negotiable, nor can they create a chose in action which is assignable other than in accordance with the statute. Delivery would at most operate as an equitable assignment and an assignee could only sue the bank in his own name after the procedure required by statute for the legal assignment of a chose in action had been completed. I think that the words "or bearer" merely have the effect of excusing payment by the bank to a holder unless they have had a contrary direction from the depositors. If the document got lost the depositors could require payment without its production and without giving an indemnity. In my opinion this document is not a security or a document of title but a mere receipt. I think, therefore, that we must deal with this transaction as we would with any other deposit in a bank. In the circumstances it appears to belong to the appellant and the appeal should be allowed.

Costs to be reserved.

Storr, J. : — I agree. The main question to be considered in this appeal is whether the words "or bearer" added to the names of the testator and appellant had any bearing on the nature of the document. The learned trial Judge came to the conclusion that such words turned the document into a bearer security, with which conclusion I am unable to agree, because had they done so, the issuing bank would have been infringing section 8(1) of the Currency Ordinance, 1938.

I agree with the learned President that all that the words "or bearer" did was to permit the bank to pay a holder unless they had received contrary directions from the named depositors. From the facts in this case there is little doubt in my mind that the testator intended this $100,000 to be a gift to the appellant so as to bring him on the same footing as his brothers.

The deposit receipt in this case, being in the joint names of the testator and the appellant and the testator having died, now belongs, in my opinion, to the survivor, the appellant. I would allow the appeal.

The question of cost has been reserved.

Whitton, J., concurred.

Appeal allowed.

CHENG LAN LIM & ORS.
v.
HOE CHENG HIN & ORS.

[C. A. (Murray-Aynsley, C.J., Brown and Storr, JJ.) August 6, 1953]

[Singapore — Civil Appeal No. 5 of 1953]

Landlord and tenant — Partnership assets — Position of a statutory tenant — Control of Rent Ordinance, 1947, s. 16 — Sale of tenancy and appointment of receivers.

The appellants (defendants) appealed against the decision of the learned trial Judge who adjudged that the tenancy of the premises known as No. 107, Marine Parade, Singapore, was a partnership asset of the Katong Rest House and that the said tenancy be put up for sale on terms and conditions to be fixed by the Registrar, the purchase to be restricted to the owner of the premises or the 1st defendant and that Messrs. Cheong Koon Seng & Co., Ltd., be appointed Receivers of the said partnership business known as the Katong Rest House, such appointment to be suspended provided Notice of Appeal is given within three weeks from the date of the said Judgment.

Held: (1) the first appellant being a statutory tenant is entitled to the personal protection of the Control of Rent Ordinance so long as he is in occupation; (2) the statutory tenancy cannot be a partnership asset.